Finn Industries, Inc. *and* General Warehousemen's Local 598, International Brotherhood of Teamsters, AFL–CIO. Case 21–CA–28732

July 28, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On December 14, 1993, Administrative Law Judge Burton Litvack issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and the briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The question presented is whether the Respondent unlawfully refused to supply information requested by the Union in the spring of 1992 that was relevant to the Union's pending contract grievance. We reverse the judge and find that the Respondent's refusal to comply with the Union's request prior to the commencement of grievance arbitration proceedings violated Section 8(a)(5) and (1) of the Act as alleged by the complaint.

I. FACTUAL BACKGROUND

Until December 27, 1991, the Respondent was engaged in the manufacture of paper bags, boxes, and cartons at its facility located in the City of Commerce, California. Since at least 1988, General Warehousemen's Local 598, International Brotherhood of Teamsters, AFL–CIO had represented the Respondent's production, maintenance, and shipping and receiving employees at the Commerce plant. The parties' most recent collective-bargaining agreement was effective June 1, 1988, through May 31, 1993.

On December 27, 1991, the Respondent ceased operations at its Commerce plant and laid off all the unit employees. At the same time, Lundin Kobe, Inc., d/b/a Finn Industries, Inc. commenced similar operations at a facility in Ontario, California. The Union immediately filed a contract grievance against the Respondent alleging, inter alia, an alter ego relationship between the Respondent and Lundin Kobe.

In its letters dated March 23 and April 29, 1992,[1] the Union asked the Respondent to supply information, including the identity of its suppliers and customers by name and address. Not having obtained the requested information by May 12, the Union filed a charge alleging that the Respondent's failure to comply with the request violated Section 8(a)(5) and (1) of the Act.

A month later, in its letter to the Union dated June 17,[2] the Respondent replied that the names and addresses of its suppliers and customers would not be revealed to the Union because they constituted confidential information.[3] Thereafter, by letter dated July 28,[4] the Respondent offered to use letter or number designations for its suppliers and customers instead of revealing their identity. On July 31, the Union rejected this proposal, but promised to keep the identity of the Respondent's suppliers and customers confidential. The Union specifically pledged not to release this information to the general public or to the Respondent's competitors.

The Respondent's president testified that the Company has spent considerable time, effort, and money in maintaining and accumulating customers since it began keeping a secret customer list in 1943.[5] The president also claimed that the Company has never disclosed its customer list to anyone other than its employees and that its salespersons are required to sign a letter stating that the names of the Respondent's customers shall be kept confidential and cannot leave the company premises. He further testified that the Company's customer list would be jeopardized if disclosed to the Union, despite the latter's pledge of confidentiality, because he claimed that the Union represented employees who worked for two competitors of the Respondent. The Union denied that it represented any employees of the Respondent's competitors.

The Union, in its March 23 letter, advised the Respondent that it needed the supplier and customer information to administer and enforce its contract with the Respondent and to evaluate and process the grievance pending since December 27, 1991. At the hearing the Union specified two purposes for the information: (1) to ascertain how the Respondent and Lundin Kobe were holding themselves out to their respective suppliers and customers and (2) to determine if the Respondent and Lundin Kobe shared any suppliers and customers.

The Union's grievance was arbitrated over 5 days during the period of June 29 through December 14,

[1] All dates are in 1992 unless otherwise indicated.

[2] This letter was sent approximately 12 days before the Union and the Respondent began arbitration of the Union's December 1991 grievance, discussed below.

[3] In its initial correspondence to the Union, the Respondent had also objected to the relevancy of the requested customer and supplier information. However, in these Board proceedings, the Respondent has not pursued this ground of objection. Thus, we find that the Respondent does not dispute that the names and addresses of its customers and suppliers are relevant to the Union's grievance.

[4] This letter was sent a month after the arbitration proceedings on the Union's grievance began.

[5] The Respondent's president did not present comparable evidence about the development, handling, and treatment of its supplier list.

1992.[6] At the June 29 session, the Union was given the manufacturer's representative agreement effective January 1, that listed the names of 25 customers of the Respondent.[7] The Union admitted that it has never contacted any of these customers to ascertain the Respondent's relationship with Lundin Kobe.

At this same session, Bob Berkowitz[8] testified about how the Respondent held itself out to its customers and suppliers after operations had ceased at the Commerce facility. His testimony reveals that the customers and suppliers were simply notified that the Respondent was relocating from Commerce to Ontario. He indicated that, as far as the customers and suppliers were concerned, the Respondent did nothing to create separate identities for the two locations. According to Berkowitz, there was no change in the company advertising (except for designation of the location), the answering of the office telephone, the company logo, the company trade name, and the product manufactured. Berkowitz further testified that the customers were not initially advised that there was any change in ownership associated with the relocation to Ontario.

During the August 10 session, the Union and the Respondent stipulated that between 90 and 95 percent of the customers and suppliers of Lundin Kobe had previously been the Respondent's customers and suppliers.[9]

In the meantime, on July 31, the General Counsel issued a complaint alleging that the Respondent, by its June 17 and July 28 letters to the Union, violated Section 8(a)(5) and (1) when it failed and refused to identify its suppliers and customers as requested by the Union's March 23 and April 29 letters. The complaint states that this information was relevant to, and necessary for, the Union's performance of its duties as the exclusive representative of the Respondent's employees.

Then, on August 3, 1993, the arbitrator ruled favorably on the Union's grievance. He found an alter ego relationship between the Respondent and Lundin Kobe.

II. THE JUDGE'S DECISION

The judge initially observed that the Union's request and the Respondent's refusal to provide the requested material continued throughout the pendency of the Union's grievance, including arbitration. The judge found that the Respondent has never provided the precise supplier and customer information requested by the Union. He also found that, until August 10, the supplier and customer information requested by the Union was both relevant and necessary for the processing of the Union's grievance.

According to the judge, the August 10 stipulation submitted during arbitration showing a continuum of suppliers and customers for the Respondent and Lundin Kobe satisfied the Union's need for its request and obviated the disclosure of the actual names and addresses of these businesses. The judge concluded that the complaint should be dismissed in its entirety because the Respondent's delayed response to the Union's request had not been alleged. Finally, the judge intimated that the case may be moot given the arbitrator's decision.

III. CONTENTIONS OF THE PARTIES

The General Counsel argues that the judge erred in finding that the August 10 stipulation fully satisfied the Union's information request. The General Counsel alternatively argues that, even assuming full satisfaction on August 10, the judge erred in dismissing the complaint because the Respondent's 5-month delayed response is encompassed within the broad 8(a)(5) allegation of the complaint. Finally, the General Counsel contends that the arbitrator's August 1993 decision has no bearing on whether the Respondent fulfilled its bargaining obligation that arose in the spring of 1992.

The Respondent agrees with the judge's analysis that any purported delay in satisfying the Union's request was not alleged and that, in any event, the case is now moot. The Respondent also argues that, even if the case is not moot, the material requested was no longer needed by the Union by the close of the arbitration hearing.

In the alternative, the Respondent avers that the Union asked for confidential information, an issue that the judge did not address. According to the Respondent, it has legitimate and substantial interests in keeping secret the identity of its suppliers and customers and that these concerns are paramount to the Union's claimed need for this material. For this reason, the Re-

[6] For purposes of this case, the Respondent relies on the information that it revealed on June 29 and August 10 as a complete satisfaction of the Union's information request. We note that the Respondent has never contended that the data supplied on those dates was unavailable for distribution at any time before the arbitration hearing began. In addition, the record does not indicate any such unavailability. Therefore, we find that this data could have been furnished to the Union within a reasonable period after the information request was made and before June 29.

[7] We note that the record does not reveal that the Respondent took any special precaution to maintain the secrecy of these customers when this disclosure was made. The Respondent also does not now argue that restrictions were imposed on the Union. Thus, we find that there were no conditions placed on the release of these customer names to the Union.

[8] Berkowitz, a stockholder of Lundin Kobe, was responsible for the production operations at both the Commerce and Ontario plants.

[9] This stipulation states, in relevant part:

> [I]f the customer lists showing names and addresses of all customers of [the purported alter ego] from August 1991 to the present, and supplier lists showing names and addresses of all suppliers of [the purported alter ego] from August 1991 to the present, were supplied, that these lists would show that between 90 and 95 percent of the customers and suppliers so listed were previously customers or suppliers of [the Respondent].

spondent contends that it was not obligated to release the material requested by the Union.

IV. DISCUSSION

We adopt the judge's finding that the Union's information request continued throughout the pendency of the December 1991 grievance. We also adopt his finding that the Respondent never provided the specific material requested before the arbitration proceedings commenced. Until June 29, the Respondent resisted the Union's request by arguing that the material requested was confidential.

In support of its argument, the Respondent submitted evidence pertaining to the development, handling, and treatment of the Respondent's customer list only. The Respondent merely asserted, without any supporting evidence, that it considers its supplier list to be confidential. We find that this bare assertion is insufficient to establish the confidentiality of the identity of the Respondent's suppliers.

Regarding the confidentiality claim for the Respondent's customers, we find that the Respondent has failed to proffer a defense supported by a preponderance of the evidence. Although professing to always keep its customer list secret, the Respondent admittedly disclosed to the Union, without any restriction whatsoever, several customers' names on June 29. Notwithstanding that such action was inconsistent with company policy, the Respondent's president provided no explanation for this obvious deviation. The Respondent thus has established no consistent policy that would warrant deeming confidentiality concerns paramount on the earlier occasions when the Union requested the information.[10] Therefore, we find that the Respondent did not establish its confidentiality defense.[11]

Having rejected the Respondent's confidentiality defense, we agree with the General Counsel that the judge erred in finding no violation here. First, we find, contrary to the judge, that the complaint provided adequate notice that the Respondent was charged with having violated Section 8(a)(5) and (1) by virtue of the responses it made to the information requests before the date on which the judge found that the arbitral stipulation ''obviated'' the need for the requested information. Thus, the complaint alleged that the Union requested information by letter on March 23 and April 29, 1992, that ''since March 1992,'' the Respondent had refused the requests through letters dated June 17 and July 28, 1992, and that this conduct amounted to a refusal to bargain within the meaning of Section 8(a)(1) and (5) of the Act. The fact that events *after* the period in which the violation was alleged to have occurred permit the conduct to be characterized as unlawful delay does not alter the fact that the Respondent was on notice that its failure to provide the information during the time frame established by the complaint allegations was alleged as unlawful.[12]

Second, we find that the evidence amply supports the complaint allegations. For 5 months, the Respondent continuously refused to reveal the requested relevant information to the Union. It was not until arbitration proceedings were well under way that the Respondent made the disclosures on June 29 and August 10, discussed above. As shown in *Resorts International Hotel*, supra, an employer is not entitled to wait until arbitration proceedings have been instituted before responding to the union's request for relevant information pertaining to a pending grievance. Thus, we find that the Respondent failed to satisfy its bargaining obligation and therefore violated Section 8(a)(5) and (1) of the Act.[13]

[10] See *Resorts International Hotel*, 307 NLRB 1437, 1438 (1992), where the Board rejected the employer's confidentiality defense. In that case, the employer wanted to control the timing of the release of the requested material. The union had requested, for purposes of processing a pending grievance, the identity of the hotel guests whose complaints were the basis for the imposition of employee discipline. The employer refused to disclose this information contending that it was confidential. However, the employer indicated that the complaining guests would be available to the union for cross-examination during the arbitration hearing.

[11] Therefore, we find it unnecessary to decide whether the Respondent's customer and supplier lists constitute protected trade secrets and what the parameters of the Respondent's bargaining obligation would be concerning that information had confidentiality been established.

[12] Finding a violation here on a delay theory is consistent with our decision in *Postal Service*, 308 NLRB 547 (1992), in which the complaint had alleged a general refusal to provide requested information in violation of Sec. 8(a)(5) and (1) of the Act, and the Board adopted the judge's finding that the employer's delay in furnishing the requested information to the union was unlawful.

Contrary to the judge, we find *Inner City Broadcasting Corp*., 270 NLRB 1230 (1984), distinguishable from the instant situation. In that case, the employer admitted that it had made late payments of pension and welfare contributions and then the union sought information to verify the employer's lateness in making these payments. The Board found no violation based on the employer's refusal to comply with the union's request because, in view of the employer's admission that the payments were indeed late, the union did not need information to verify that the payments were late. In contrast, here the Union sought the customer and supplier information to prove that the Respondent and Lundin Kobe were alter egos, a relationship that the Respondent denied existed.

[13] The judge in essence found that the August 10 stipulation cured the Respondent's unlawful refusal to supply the requested information prior to the start of the arbitration proceedings. Contrary to the judge, an employer's belated compliance with a union's request for relevant information does not retroactively cure an unlawful refusal to supply requested information. See, e.g., *Iron Workers Local 86*, 308 NLRB 173 fn. 2 (1992); *Consolidation Coal Co*., 307 NLRB 69 (1992). Further, as the Board stated in *Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989), ''[p]art of the duty to supply information includes the duty to do so in a timely fashion.'' This duty exists even if the grievance is settled and is never arbitrated. See *Resorts International Hotel*, supra. The union's reasons for requesting information and the employer's refusal to comply with the request are evaluated when the demand for information and subsequent refusal were made. In the instant case, the pertinent time is the spring

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As part of the remedy, we do not require the Respondent to now furnish the identity of its suppliers and customers to the Union. As previously indicated, during the arbitration proceedings, the Respondent stipulated that it and Lundin Kobe shared a substantial number of customers and suppliers. The Respondent also submitted witness testimony showing that the Respondent and Lundin Kobe held themselves out to the public as the same entity. Thus, because this material satisfied the two purposes specifically stated at the hearing by the Union as underlying its need for the identify of the suppliers and customers, as noted above, we shall not require the Respondent to supply anything further in response to the Union's March 23 information request.[14]

In light of the record evidence that the Respondent closed its City of Commerce, California facility on December 27, 1991, we shall require the mailing of copies of the notice to all unit employees employed at the time of closing.[15]

ORDER

The National Labor Relations Board orders that the Respondent, Finn Industries, Inc., City of Commerce, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with General Warehousemen's Local 598, International Brotherhood of Teamsters, AFL–CIO by failing and refusing to furnish it, in timely fashion, with requested relevant information necessary for grievance processing.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in City of Commerce, California, copies of the attached notice marked ''Appendix''[16] to the last known address of all unit employees as of the date of the 1991 closing of the Respondent's City of Commerce, California facility. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with General Warehousemen's Local 598, International Brotherhood of Teamsters, AFL–CIO by failing and refusing to furnish it, in timely fashion, with requested relevant information necessary for grievance processing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

FINN INDUSTRIES, INC.

and summer of 1992. Thus, we reject the Respondent's mootness argument.

[14] We do not pass on whether the identity of the Respondent's suppliers and customers, if requested by the Union, should be revealed for any future grievances or for different purposes related to the Union's collective-bargaining representative role.

[15] *GHR Energy Corp.*, 294 NLRB 1011 fn. 5 (1989), enfd. mem. 924 F.2d 1055 (5th Cir. 1991).

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Jean C. Libby, Esq., for the General Counsel.
Lee Smith, Esq. (Smith and Smith), of Beverly Hills, California, for the Respondent.
Ralph M. Phillips, Esq. (Wohlner, Kaplon, Phillips, Vogel & Young), of Encino, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. On May 19, 1992, the unfair labor charge, in the above-captioned matter, was filed by General Teamsters Local 598, International Brotherhood of Teamsters, AFL–CIO (the Union). Based upon the unfair labor practice charge, on July 31, 1992, the Regional Director of Region 21 of the National Labor Relations Board (the Board) issued a complaint, alleging that Finn Industries, Inc. (Respondent) engaged in, and is engaging in, acts and conduct violative of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent filed an answer, essentially denying the commission of any of the alleged unfair labor practices. Based on a notice of hearing, the matter came to trial before me in Los Angeles, California, on February 19, 1993. At the hearing, all parties were afforded the opportunity to examine and cross-examine

all witnesses, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. The documents were filed and each brief has been carefully considered. Accordingly, based on the entire record herein, including the posthearing briefs and my observation of the testimonial demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times, until on or about December 27, 1991, Respondent, a State of California corporation, maintained an office and place of business in the City of Commerce, California, and was engaged in the manufacture of paper bags, boxes, and cartons. In the normal course and conduct of the business operations, during the calendar year ending December 31, 1991, Respondent sold and shipped goods and products, valued in excess of $50,000, directly to customers, who are located outside the State of California. Respondent admits that, at all times material, it was engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that, at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUE

The complaint alleges that, since on or about March 23, 1992, the Union, as the collective-bargaining representative of certain of Respondent's employees, has requested that Respondent provide it with information pertaining to the names and addresses of Respondent's suppliers and customers, which information is necessary and relevant for the processing and arbitration of a grievance and that, by failing and refusing to provide the information to the Union, Respondent has engaged in conduct violative of Section 8(a)(1) and (5) of the Act. Respondent denies the commission of any unfair labor practices, arguing that the requested information is not necessary for the Union's stated purpose; that the information entails trade secrets and is, therefore, confidential; and that a balancing of the interests of the respective parties establishes that the information need not be provided to the Union.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

There exists no dispute as to the events establishing the alleged unfair labor practices engaged in by Respondent. Thus, the record establishes that Respondent, whose plant facility is located in the City of Commerce, California, is engaged in the manufacture and sale of paper bags, boxes, and cartons; that Respondent and the Union have had a collective-bargaining relationship since, at least, 1988, with the Union acting as the exclusive bargaining representative of a unit essentially comprising Respondent's production, maintenance, and shipping and receiving employees; and that the most recent collective-bargaining agreement, between the parties, was effective, by its terms, from June 1, 1988, through May 31, 1993.[1] The record further establishes that, in the summer of 1991, Respondent informed the Union that it was ceasing its business operations and closing its City of Commerce plant and offered to bargain with the Union with regard to the effects of the cessation of operations on the bargaining unit employees. Later, in the summer of 1991, the Union learned from bargaining unit employees that Respondent planned, in the near future, to open a new facility in Ontario, California; that Respondent would be engaged in the identical business operations at the Ontario facility as had been performed at the City of Commerce plant; and that ''virtually the entire bargaining unit had been invited to work at the new location.'' Subsequently, in December 1991, with business operations being conducted under Respondent's name, production commenced at the Ontario plant, and the Union became convinced that, rather than closing its City of Commerce plant in order to cease business operations, Respondent's actual plan was to relocate its business to Ontario, California.[2] Thereafter, on December 27, Respondent, in fact, ceased operations at its City of Commerce plant and laid off all the bargaining unit employees. Pursuant to the contractual grievance and arbitration procedure, the Union immediately filed a grievance, alleging that, rather than ceasing business operations, Respondent, in fact, had transferred business operations to an alter ego company and laid off bargaining unit personnel in violation of the existing collective-bargaining agreement and requesting reinstatement of the employees and application of the existing contract to work at the new Ontario facility. Later, on January 29, 1992, the Union filed an unfair labor practice charge, Case 21–CA–28489, with the Board, asserting that, inasmuch as Lundin Kobe, Inc. d/b/a Finn Industries, Inc. (Lundin Kobe), the name of the owner of the business in Ontario, California, is, in fact, an alter ego for Respondent, its layoff of the bargaining unit employees at the City of Commerce facility, relocation without bargaining with the Union, and failure to adhere to the terms of the existing collective-bargaining agreement were violative of the Act, and the Regional Director of Region 21 of the Board, pursuant to the Board's procedure in such matters, deferred action on the charge pending arbitration of the above-described contractual grievance.

On March 23, 1992, Ralph M. Phillips, counsel for the Union sent a letter and an attached 74-question questionnaire, to be answered under oath by Respondent, to Harold Brody, counsel for the latter. Writing that the requested information was generally necessary so that the Union could ''fully evaluate and process [the] grievance . . . and . . . administer and enforce its collective bargaining agreement . . . .'' with Respondent, Phillips added that the enclosed questionnaire was specifically ''designed to determine whether [Respondent] has, in fact, ceased operations or whether the business is continuing through a successor or alter ego.'' With regard to the information sought by the questionnaire itself, question 22(a) asks Respondent to identify each of its suppliers and question 32(a) asks Respondent to identify each of its customers, including the address of each. At the trial, At-

[1] The extent of the bargaining unit, represented by the Union, is set forth in art. XXVII of the collective-bargaining agreement.

[2] On or about January 8, 1992, the Union received, by mail a document, dated December 15, 1991, and with Respondent's name at the top, announcing to the reader ''WE HAVE MOVED'' and setting forth a new Ontario, California address and telephone number.

torney Phillips testified that the requested information is necessary in alter ego cases inasmuch as the ''an ongoing continuation of customers and suppliers'' is ''an element'' of proof and as ''it's necessary for [the union] . . . to show how the Employer is holding itself out to its customers and suppliers.'' Replying by a letter dated April 30, Brody stated several objections to the Union's request for information, including the misuse of a questionnaire, the demand that such be answered under oath, and the ''unduly burdensome and oppressive and overbroad'' nature of the request. Nevertheless, Brody did agree to provide unspecified information, with regard to Respondent's cessation of operations, to the Union ''in due course.''

By a letter to Brody dated April 29, Phillips renewed the March 23 information request, seeking full and complete information, which Respondent did not characterize as ''unduly burdensome or confidential,'' and requesting, for any remaining information, that Brody explain why such is either unduly burdensome or confidential. In a letter to Phillips dated June 17, Respondent's present attorney, Lee S. Smith, provided answers to most of the March 23 questionnaire but refused to supply the requested information regarding Respondent's suppliers and customers, contending that such involves ''confidential, trade secret information and . . . information which is irrelevant and immaterial.'' By a letter to Smith dated July 16, Phillips again renewed the Union's request for the names and addresses of Respondent's suppliers and customers,[3] stating that applicable Board law entitled the Union to said information. Smith responded to Phillips by a letter, dated July 28, in which he offered to provide the requested supplier and customer information by ''using designations for the companies such as by letter or number.'' He added that the ''actual names'' were neither relevant nor necessary for the Union's purposes at the arbitration of the pending grievance. Also, in a letter to Phillips dated July 30, Smith provided numerical answers to the questions regarding suppliers and customers, stating that, of Respondent's 206 suppliers during calendar year 1991, Lundin Kobe utilizes 136 of the suppliers and that, of Respondent's 549 customers during calendar year 1991, approximately 252 are customers of Lundin Kobe. Replying to both letters in a letter to Smith dated July 31, Attorney Phillips wrote that the supplier and customer answers were unacceptable as not only did Respondent fail to provide names and addresses but also ''it is impossible for [the Union] to determine whether Lundin Kobe, Inc. has utilized any suppliers or has done business with any customers [Respondent] did not use or do business with'' or to verify the information by contacting the customers or suppliers. With regard to Respondent's confidentiality objection, Phillips pledged, on behalf of the Union, to keep whatever supplier and customer information was provided as confidential. There is no dispute that, at no time material herein, has Respondent provided the requested supplier and customer information to the Union.

Commencing on June 29 and concluding on December 14, 1992, the arbitration hearing, before Arbitrator Joseph Gentile, on the Union's grievance continued for 5 days. During the arbitration hearing, Respondent's counsel offered into the record an exhibit, entitled ''Manufacturer's Representative Agreement,'' which includes a listing of some of its customers. Attorney Phillips, who represented the Union at the arbitration, admitted that neither he nor the Union made any effort to contact any of the listed companies in order to verify that each was, in fact, a customer of Respondent or to ascertain if any were customers of Lundin Kobe. Further, at the arbitration hearing session on August 10, subject to the ''possible need to verify [the] information,'' Attorney Phillips entered into a stipulation of fact, proposed by counsel for Respondent and by counsel for Lundin Kobe, that, if lists of the names of all the customers and of all the suppliers of Lundin Kobe, for the time period August 1991 to the present, were provided to the Union, ''these lists would show that between 90 and 95 percent of the customers and suppliers so listed were previously customers or suppliers of [Respondent].'' During cross-examination, Phillips agreed that the Union had no need to verify if fewer than the stipulated numbers of suppliers and customers of Respondent and of Lundin Kobe were identical. Finally, with regard to the arbitration, Phillips asserted that, while the hearing had concluded prior to the instant trial, the record therein does not officially close until the issuance of the arbitrator's decision.[4]

As did Attorney Smith in his July 28 letter to Phillips, Respondent contends that the requested names of its suppliers and customers constitute confidential, trade secret information. Thus, William Finn testified that, since 1969 when it acquired a small customer list, Respondent has spent several hundred thousand dollars in maintaining it and accumulating new customers and that the customer list is Respondent's ''most important asset.''[5] In this regard, according to Finn, Respondent's salespersons are required to ''sign a letter saying that everything they had learned of the sales list, estimating policies, production procedures was confidential information and could not leave the company premises.'' Finn added that he has never disclosed his customer list to anyone other than Respondent's employees and that, notwithstanding being aware of Attorney Phillips' pledge of confidentiality, he fears disclosure to the Union inasmuch as it represents employees of, at least, two competing paper products manufacturers. As to the latter point, Tom Lauer, the president and business agent of the Union, denied that the Union represents employees of any other paper products manufacturer.

B. *Legal Analysis*

As to whether Respondent's refusal to provide the requested supplier and customer information to the Union constitutes a violation of Section 8(a)(1) and (5) of the Act, there is no dispute as to the applicable legal principles. Thus, it has long been established that, generally, an employer is under a statutory obligation to, on request, provide a labor organization, which is the collective-bargaining representative of the employer's employees, with information, which is necessary and relevant for the proper performance of the labor

[3] The March 23 request sought only the names of Respondent's suppliers and not their addresses.

[4] In fact, subsequent to the time set for the filing of briefs, counsel for Respondent sent a copy of the arbitrator's decision, dated August 3, 1993, to me and argued that, inasmuch as the arbitrator ruled that Lundin Kobe is an alter ego of Respondent, the allegations herein are moot.

[5] Stating that the customer list is worth what Respondent's annual sales are, Finn testified that, in 1991, the customer list was worth a minimum of $11 million.

organization's duties in representing the bargaining unit employees. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956); *Howard University*, 290 NLRB 1006 (1988). This duty to provide information encompasses not only material necessary and relevant for the purpose of contract negotiations but also information necessary for administration of a collective-bargaining agreement, including information required by the labor organization to process a grievance through arbitration. *Acme Industrial*, supra; *Jewish Federation Council of Greater Los Angeles*, 306 NLRB 507 (1992); *Bacardi Corp*., 296 NLRB 1220 (1989); *Howard University*, supra. The standard for relevancy is a ''liberal discovery-type standard,'' with the sought-after evidence not having to be necessarily dispositive of the issue between the parties but only of some bearing on it and of probable use to the labor organization in carrying out its statutory responsibilities. *Bacardi Corp*., supra; *Howard University*, supra; *Pfizer, Inc*., 268 NLRB 916 (1984).[6] Necessity is not a guideline in itself but rather is directly related to relevancy, and only the probability that the requested information will be of use to the labor organization need be established. *Bacardi Corp*., supra. Moreover, information, which concerns the terms and conditions of employment of the bargaining unit employees, is deemed ''so intrinsic to the core of the employer-employee relationship'' so as to be presumptively relevant. *York International Corp*., 290 NLRB 438 (1988), quoting *Southwestern Bell Telephone Co*., 173 NLRB 172 (1968); *Buffalo Concrete*, 276 NLRB 839 (1985). While the foregoing constitutes a general statement of the applicable legal principles, in *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1983), the Supreme Court ''recognized a limited exception [to the duty to provide relevant information to a bargaining representative] for information that is confidential in nature.'' *New Jersey Bell Telephone Co. v. NLRB*, 720 F.2d 789, 791 (3d Cir. 1983). In such circumstances, where the employer has raised a ''legitimate and substantial'' claim of confidentiality,[7] ''the Board is . . . required to balance the [labor organization's] need for the information against the legitimate confidentiality interest established by the employer.'' *General Dynamics Corp*., 268 NLRB 1432, 1433 (1984).

In order to properly evaluate the merits of the complaint allegations herein, it is initially necessary to understand what is not alleged. In this regard, the Union's requests for supplier and customer information and Respondent's failure and refusal to provide such to the Union continued throughout the pendency of the instant grievance, including the arbitration proceeding. However, while ''part of the duty to supply relevant information includes the duty to do so in a timely fashion'' (*Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989)), and the failure to do so constitutes a violation of Section 8(a)(1) and (5) of the Act (*Teamsters Local 921 (San Francisco Newspaper)*, 309 NLRB 901 (1992)), such is not an allegation of the complaint herein. Rather, what is alleged only concerns Respondent's failure and refusal to provide the requested information to the Union, and, on this point, while not questioning the relevancy of the requested information to the grievance, Respondent, instead, argues that, at the close of the arbitration hearing, the requested information was no longer ''reasonably necessary'' for the grievance. For the foregoing reasons, I find merit in this aspect of Respondent's defense.

There can be no doubt that, until the August 10, 1992 session of the arbitration hearing, the requested supplier and customer information was both relevant and necessary for the processing of the grievance, concerning the alter ego status of Lundin Kobe, by the Union. Thus, in support of its grievance, it was the Union's burden of proof to establish an ''ongoing continuation of customers and suppliers'' initially utilized by Respondent and then by its asserted alter ego, Lundin Kobe; counsel for the Union explained that the names of establish such a continuum; and, as Respondent failed to provide the requested information by the commencement of the arbitration proceeding, the Union had been significantly impeded in its efforts to investigate and properly evaluate a consequential aspect of its grievance. However, at the conclusion of the August 10 arbitration session, while the requested material retained its relevancy for the Union's grievance, the need for the information, by the Union, became obviated; for, during the hearing that day, the Union's attorney, Phillips, agreed to a proposed stipulation of fact that 90 to 95 percent of the suppliers and customers of Lundin Kobe had previously been customers and suppliers of Respondent. Accordingly, the exact ''element'' of proof, which the Union hoped to demonstrate by investigating supplier and customer information provided by Respondent, was established by dint of stipulation. Similarly, in *Inner City Broadcasting Corp*., 270 NLRB 1230 (1984), the complaint alleged that the respondent had violated Section 8(a)(1) and (5) of the Act by failing to furnish certain financial information to a union. Therein, the employer was dilatory in making required pension and welfare contributions, and the union contended that the requested financial information was necessary for it to decide whether the filing of a grievance was warranted. In response, the employer explained that the payments had been late due to cash-flow problems, thereby, in effect, admitting that the payments had been late. Citing *Acme Industrial Co*., supra at 437, wherein the Supreme Court noted that the information, at issue therein, ''would be of use to the union in carrying out its statutory duties and responsibilities,'' the Board, noting that, assuming lateness was grievable, the union had no further need for any information to enable it to decide whether to file a grievance, concluded that the desired information was not ''reasonably necessary'' to the Union and dismissed that allegation of the complaint. *Inner City Broadcasting*, supra at 1230 fn. 1. The same result must attain herein. Thus, assuming that a necessary element of proof for the Union's alter ego theory was a continuum of suppliers and customers for Respondent and for Lundin Kobe, the above-described stipulation of fact, entered into during the arbitration proceeding, established said element of proof, and clearly the Union possessed no further demonstrable need for the requested names of Respondent's

[6] In cases where a labor organization seeks information in order to establish the existence of an alter ego relationship, it is not required to prove the existence of such in order to show relevancy. Instead, the General Counsel need only establish that the labor organization had an objective factual basis for believing that one entity is the alter ego of the other. *Assn. of D.C. Liquor Wholesalers*, 300 NLRB 224, 229 (1990); *M. Scher & Sons*, 286 NLRB 688 (1987).

[7] An employer bears the burden of demonstrating that its refusal to provide relevant and necessary information to a labor organization is excusable because the requested data is privileged information. *McDonnell Douglas Corp*., 224 NLRB 881 (1976).

suppliers and customers. Accordingly, as the matter of delay in supplying the requested information is not alleged as a violation of the Act herein and as, at the conclusion of the arbitration hearing, the names of Respondent's suppliers and customers became no longer ''reasonably necessary'' for the Union's purposes, I shall recommend dismissal of the complaint allegation that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the information to the Union. *Inner City Broadcasting*, supra.[8]

[8] Although not the basis for my decision, I cannot ignore the fact that, while the instant matter has been pending before me, the arbitrator issued his decision, finding that Lundin Kobe is, in fact, the alter ego of Respondent. While counsel for the Union asserts that the arbitration hearing record is not closed, I cannot see any conceivable reason why he would desire to reopen the record in order to contest the arbitrator's finding. In these circumstances, there exists no need for the issuance of a remedial order herein, and, the instant proceeding may indeed, be moot. *Sinclair Refining Co*., 145 NLRB 732, 733–734 (1963).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not engage in conduct violative of Section 8(a)(1) and (5) of the Act.

[Recommended Order for dismissal omitted from publication.]